



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,641	10/17/2003	Glen T. Anderson	550.0155USQX	1956

EXAMINER	
CHOI, FRANK I	

ART UNIT	PAPER NUMBER
1616	

MAIL DATE	DELIVERY MODE
10/09/2007	PAPER

7590 10/09/2007
CHARLES N.J. RUGGIERO, ESQ.
OHLANDT, GREELEY, RUGGIERO & PERLE, L.L.P.
10th FLOOR
ONE LANDMARK SQUARE
STAMFORD, CT 06901-2682

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/688,641

Applicant(s)

ANDERSON ET AL.

Examiner

Frank I. Choi

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8, 10, 15, 17 and 29-42 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 8, 10, 15, 17 and 29-42 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 20050413, 20040702, 20040209.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Objections

Claims 8 is objected to because of the following informalities:

Claim 8, line 11, colon mark should be deleted by use of double brackets as use of line through looks like division sign.

Claim 8, deletion of formulae should be by use of double brackets as single line does not go through all numbers, characters, etc.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8,10,15,17,29-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 9938483 (Abstract) in view of Lapinet et al. (US Pat. 3,978,213), Tomita et al. (US Pat. 5,314,873), Peyronel et al., WO 9204420 (Abstract), WO 97/27835, Moller et al. (US Pat. 4,496,536), JP 09030946 and WO 96/17605.

WO 9938483 teach a method of treating skin comprising Artemia salina extract combined with additional cosmetic active ingredients and supporting materials which results in a synergetic effect against the environment by strengthening the immune system, providing UV protection and stimulating skin regeneration (Abstract).

Art Unit: 1616

Lapinet et al. teach a method of treating skin comprising cyclic adenosine monophosphate which is involved in the regulation of function and metabolism and is a "second messenger" (column 1, lines 18-26, column 3, lines 1-26, column 4, lines 1-7).

Tomita et al. teach a method of treating skin comprising hydrolyzed milk protein which has a proliferation activating property on cutaneous cells (column 5, lines 16-22, column 6, lines 12-68, columns 7-27, column 28, lines 1-50).

Peyronel et al. teach that a component of plankton extract, dinucleotide tetraphosphate, stimulates the synthesis of keratins and fibronectin in skin cells (Abstract).

WO 9204420 teach that sunflower seed extract exhibits superior antioxidant activity versus other antioxidants such as ascorbic acid and tocopherol and is highly safe when used in pharmaceuticals (Abstract).

WO 97/27835 discloses a personal care composition which is used to ameliorate skin dryness, wrinkling, chapping and aging and enhance the quality and flexibility of skin which is an aqueous liquid comprising a lipid composition, such as phytol, surface active agent and deposition aid (Page 1, lines 1-8, Page 3, lines 20-35, Page 4, line 1, Page 12, lines 12-18)

Moller et al. disclose emulsions containing phytol which is effective in treating seborrhea (Column 1, lines 45-68, Column 2, lines 1-26).

JP 09030946 teaches the use of extracts Andrographis in oil-in-water preparations for skin lightening which inhibits melanin formation and tyrosinase (paragraphs 0004-0035).

WO 96/17605 teach that extracts of Andrographis contain andrographolide compounds (pg. 6).

Art Unit: 1616

The prior art discloses a method of treating skin comprising Artemia salina extract combined with additional cosmetic active ingredients and supporting materials which results in a synergetic effect against the environment by strengthening the immune system, providing UV protection and stimulating skin regeneration. The difference between the prior art and the claimed invention is that the prior art does not expressly disclose the claimed method of improving the aesthetic appearance of the skin in which the composition contains andrographolide. However, the prior art amply suggests the same as the use of andrographolide for treatment of skin which lightens the skin, that plankton extract rejuvenates skin, that sunflower seed extract has antioxidant properties, that phytol is effective in treating seborrhea, that adenosine monophosphate regulates the function and metabolism of skin, that hydrolyzed milk protein is used to treat skin and has a proliferating property on cutaneous cells and that compositions which ameliorate skin dryness, wrinkling, chapping and aging and enhance the quality and flexibility of skin can contain phytol. Further, it would have been well within the skill of and one of ordinary skill in the art would have been motivated to modify the prior art to prepare a composition for treating skin with the expectation that the composition would be effective for treating wrinkles, rejuvenating skin and ameliorating skin dryness, chapping, aging and enhancing the quality and flexibility of the skin.

Therefore, the claimed invention, as a whole, would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, because every element of the invention has been collectively taught by the combined teachings of the references.

Double Patenting

Claims 8,10,15,17,29-42 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 29-31,36,38-44 of copending Application No. 11/040,534 in view of WO 9938483 (Abstract), Lapinet et al. (US Pat. 3,978,213), Tomita et al. (US Pat. 5,314,873), Peyronel et al., WO 9204420 (Abstract), WO 97/27835, Moller et al. (US Pat. 4,496,536), JP 09030946 and WO 96/17605.

The claims of the co-pending application claim a method of improving the aesthetic appearance of skin with phytol, sunflower seed extract and andrographolide and can further contain adenosine 3',5'monophosphate and hydrolyzed milk protein.

WO 9938483 (Abstract), Lapinet et al. (US Pat. 3,978,213), Tomita et al. (US Pat. 5,314,873), Peyronel et al., WO 9204420 (Abstract), WO 97/27835, Moller et al. (US Pat. 4,496,536), JP 09030946 and WO 96/17605 are cited for the same reasons as above and are incorporated herein to avoid repetition.

The claims of the co-pending application claim a method of improving the aesthetic appearance of skin with the same compounds as the present claims. The difference between the claims of the co-pending application and the claimed invention is that the claims do not claim the specific improvements claimed in the present invention, including improvement of wrinkles, fine lines, smoothness, texture, firmness, moisture level, elasticity and resiliency. However, the prior art amply suggests the same as the prior art discloses and/or suggests that formulations for skin treatment containing said components would be effective in treating wrinkles and rejuvenating skin, including ameliorating chapping, dryness and enhancing quality and flexibility of skin.

Art Unit: 1616

Therefore, the claimed invention, as a whole, would have been an obvious modification of the claims of the co-pending application to one of ordinary skill in the art at the time the invention was made, because every element of the invention has been collectively taught by the combined teachings of the co-pending claims and the cited references.

This is a provisional obviousness-type double patenting rejection.

Conclusion

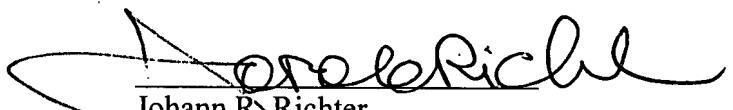
A facsimile center has been established in Technology Center 1600. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier number for accessing the facsimile machine is 571-273-8300.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Choi whose telephone number is (571)272-0610. Examiner maintains a compressed schedule and may be reached Monday, Tuesday, Thursday, Friday, 6:00 am – 4:30 pm (EST).

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Johann R. Richter, can be reached at (571)272-0646. Additionally, Technology Center 1600's Receptionist and Customer Service can be reached at (571) 272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frank Choi
Patent Examiner
Technology Center 1600
September 29, 2007


Johann R. Richter
Supervisory Patent Examiner
Technology Center 1600